

*De George*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Vicor Associates, Inc.

**File:** B-241496.2

**Date:** March 13, 1991

Richard C. Spitzer, Esq., for the protester.  
Peter G. Perry for Array Services Corporation, an interested party.  
M. Moncada, Department of Transportation, for the agency.  
Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. A potential competitive advantage accruing to one offeror by virtue of its prior experience need not be discounted or equalized in favor of the other offerors where the advantage does not result from preferential treatment or other unfair action by the government.
2. A procuring agency's technical evaluation will not be questioned where the record shows that the evaluation had a reasonable basis and was consistent with the evaluation criteria listed in the RFP.
3. Bias or prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or supposition.

### DECISION

Vicor Associates, Inc. protests the award of a contract to the University of New Hampshire under request for proposals (RFP) No. DTFH61-90-R-00081, issued by the Federal Highway Administration, Department of Transportation (FHWA), for a study entitled "National Geotechnical Experimentation Sites: Central Data Repository." Vicor contends that FHWA failed to disclose material information, not otherwise available to offerors, which resulted in an unfair advantage to the awardee and that the RFP was drafted and/or evaluated in a fashion favoring the awardee.

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We deny the protest.<sup>1/</sup>

The RFP was issued for the award of a cost-type contract to conduct a study pertaining to the development of a central data repository for data collected at multiple-user test sites to be used for advanced geotechnical research. The work to be accomplished under the contract was divided into four separately defined tasks. These tasks were sequentially ordered and each built upon its predecessor task. In basic terms, the RFP calls for the successful offeror to initially analyze and develop the requirements and criteria necessary to develop a user-friendly central data repository of information pertaining to national test sites for geotechnical research. Second, an analysis of existing data provided by FHWA from approximately 80 test sites is to be conducted in order to determine what data from those sites can appropriately be included in the developed central data repository. The information subsequently included is then to be summarized by the contractor in a catalog for distribution to potential researchers. Finally, the RFP calls for the preparation of both draft and final reports describing the completion of each task by the contractor.

The RFP provided that award would be made <sup>to</sup> ~~based upon~~ the offer considered the most advantageous to the government. Three factors were to be considered: technical, cost, and past performance. Technical and cost were stated to be of equal importance and past performance was stated to be of lesser importance.

A total of five proposals were received in response to the RFP. Four proposals, including the protester's, were found to be acceptable and placed within the competitive range. Following negotiations and evaluation of best and final offers (BAFO), award was made to the University on September 28, 1990, based on its technical score of 90 points--the highest received--and a cost of \$89,591. Vicor's proposal received 67 points; the lowest score received. It proposed a cost of \$72,412.

The record shows that Vicor's proposal was downgraded principally under the technical evaluation factor identified as: "[d]emonstrated familiarity with previous work done in this field." According to FHWA, the protester's proposal "did not demonstrate adequate familiarity with previous work done

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<sup>1/</sup> This is the second protest by Vicor concerning this procurement. The previous protest, which also challenged FHWA's award decision, was dismissed in part and denied in part. See Vicor Assocs., Inc., B-241496, Feb. 6, 1991, 91-1 CPD ¶ 127.

in the subject area." This deficiency was communicated to Vicor at a debriefing after the award was made. The "previous work" referred primarily to two studies performed by the University under contract with the National Science Foundation.

Vicor contends that FHWA failed to disclose in the RFP the existence of the previous studies conducted by the University. According to the protester, this was material information, not otherwise available to the offerors, which resulted in an unfair advantage to the University. As a consequence, Vicor alleges that its proposal was improperly found deficient for failure to demonstrate adequate familiarity with previous work in the subject area of the solicited study.

Vicor also contends that by virtue of having performed this previous work, the University held a competitive advantage over all other offerors, which was made insurmountable by the terms of the solicitation. In this regard, the protester argues that the solicitation in effect calls for follow-on work to that previously done by the University. For example, the protester asserts that the University previously identified the test sites to be analyzed under the contract and has already developed a prototype system and the required summary catalogue. These efforts, according to the protester, were accomplished by the University in connection with the studies conducted for the National Science Foundation.

FHWA responds that the evaluation was based upon offerors' familiarity with the existence of the previous work in the field and not upon their specific knowledge of the University's prior work. Furthermore, the agency reports that, in fact, all other acceptable offerors identified and discussed the University's studies in their proposals. With respect to Vicor's contention that the solicitation effectively represented a follow-on project for work previously done by the University, the agency responds that the project funded by the National Science Foundation is not the same as the work solicited under the subject RFP. According to FHWA, the prototype computer system and summary catalogue previously developed by the University were not designed for the project contemplated here, and that while the test sites identified by the University will be the same sites analyzed under this contract, the RFP specifically stated that the data pertaining to the sites would be supplied to the successful offeror by the government.

The crux of Vicor's complaint is that the University must have possessed a competitive advantage in this procurement resulting from its prior work in the subject area. A firm may in fact gain an advantage over other firms by virtue of its prior experience, and such an advantage, so long as it is not


the result of preferential treatment or other unfair action by the government, need not be discounted or equalized. Liberty Assocs., Inc., B-232650, Jan. 11, 1989, 89-1 CPD ¶ 29. The agency reports that the work previously performed by the University, which was funded by the National Science Foundation, is substantively different from the study called for by the solicitation. While it is apparent that the prior work did bear some relation to the instant procurement, we do not believe that there is anything improper or illegal in the advantage gained by the University as a result of work it performed for a different entity. Further, while the protester complains that the statement of work was designed to fit the University's experience rather than to express the agency's actual minimum needs, we have carefully reviewed the solicitation and find no basis to conclude that it does not, in fact, reflect the legitimate needs of the agency.

The protester also argues that the evaluation of the University's proposal was improper because it unfairly took into account that offeror's prior work for the National Science Foundation. As discussed above, any advantage gained by the University as a result of its prior experience was not improper or illegal. Further, the agency reports that its evaluation did not reward substantive knowledge of these prior University efforts. According to the agency, the evaluation was limited to a consideration of offerors' knowledge of the existence of prior work in the field. The protester also argues that the University's proposal failed to comply with certain instructions contained in the RFP and therefore did not warrant the high technical score received. Having reviewed the proposals and the results of the evaluation included in the record, we have no basis to find that FHWA acted either unreasonably or not in accordance with the solicitation criteria in awarding the highest technical score to the University. See Physical Sciences, Inc., B-236848, Jan. 10, 1990, 90-1 CPD ¶ 42. There is simply no basis to find improper conduct on the part of FHWA in regard to the evaluation of proposals.

We similarly find no basis in support of the protester's allegations of bias in favor of the University on the part of the agency. We will not attribute prejudicial motives to contracting officials on the basis of unsupported allegations, inference or supposition. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114. Here, there is no evidence to

support bias other than the fact that the University performed prior work in the subject area of this procurement. Under our standard of review, significantly more is required.

The protest is denied.<sup>2/</sup>

  
James F. Hinchman  
General Counsel

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<sup>2/</sup> In its lengthy comments after the conference in this case, Vicor raised a number of additional grounds of protest including allegations of restrictive specifications, conflict of interest and inadequate discussions. We find these matters untimely. Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the latter raised allegations must independently satisfy the timeliness requirements. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protests. Joseph L. De Clark & Assocs., Inc.--Recon., B-233166.3, Apr. 6, 1989, 89-1 CPD ¶ 357.